SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202)424-7500
FACSIMILE (202) 424-7643

GARY SLAIMAN
DIRECT DIAL (202) 424-7707
GDSLAIMAN@SWIDLAW.COM

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND-DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Portals II, Room TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Meeting in RM-9108: Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services

Dear Ms. Salas:

The attached ex parte comments respond to a meeting convened by the Common Carrier Bureau on November 30, 1999, at which local exchange carrier billing and collections issues were discussed. Larry Strickling, Robert Atkinson and Darius Withers of the Commission presided over the meeting. These comments are filed on behalf of the Coalition to Ensure Responsible Billing ("CERB")[1], which was represented at the meeting by Ken Dawson of Integretel, Steve Rosenthal of OAN, Patrick Herold of FTT, Karyl Sparks of ILD, Terry Stock of USP&C and counsel Gary Slaiman and Kristine DeBry. The Common Carrier Bureau offered the opportunity for participants to file comments summarizing their positions and supplementing the record by December 15, 1999. CERB also attaches here the handouts it presented at the meeting. Pursuant to the Commission's rules, an extra copy is attached.

I. Introduction

CERB commends the Commission for convening the November 30, 1999, meeting to begin a dialogue on local exchange carrier ("LEC") billing and collections practices. CERB supports the Commission's inquiries into this area and suggests that, notwithstanding the deregulation of billing and collections, there are actions the Commission can take to protect the

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[1] CERB is composed of seven billing clearinghouses that work to ensure the integrity and increase the clarity of the local telephone bill, while preserving competition for the telecommunications services of third parties that are billed on the local bill. The members of CERB are Billing Concepts, Federal TransTel, HBS Billing Services, ILD Teleservices, Integretel, OAN Services, and USP&C.

competition that is fostered by LEC billing for third party telecommunications services and products. Gathering the industry to discuss billing and collections issues was a critical first step toward preserving the competitive environment that now exists for these services. Furthermore, CERB would enthusiastically support an industry-based solution to LEC billing and collections problems, under the aegis of the Commission. CERB applauds the LECs who chose to constructively participate in the November 30 meeting and regrets the absence of U S WEST, a LEC that has taken actions particularly destructive to its competitors for telecommunications services.

The various billing clearinghouses that are members of CERB have established billing and collections contracts with all of the Regional Bell Operating Companies ("RBOCs"), GTE, and most independent incumbent LECs. CERB members primarily assist smaller competitive companies offering interexchange services and "ancillary" services such as voice mail, Internet access, paging and other services by aggregating these companies' charges under a single contract with each LEC. These billing arrangements are essential to the development of an efficient and competitive telecommunications marketplace, as consumers benefit from the simplicity and accounting convenience of a single bill, and as smaller competitive companies are able to reach their customers through the local telephone bill on better terms and at a lower cost.

The Commission has recognized that "consumers have generally expressed a preference for a single bill."[2] LECs have also recognized this fact, and are increasingly selling consumers non-local telecommunications services such as voice mail, caller ID equipment, wireless service, and Internet access by promoting the fact that these services can be purchased through a single bill. Indeed, BellSouth uses a "One Bill" logo to promote sales of ancillary services on its marketing web site[3] and GTE markets a "One Bill" service.[4] LECs are well aware that consumers will be less likely to order a competitive service if buying that service will entail the hassle of writing another check, usually for a small amount of money, instead of paying for the service on a single bill. Over the past few years, robust competition has begun to develop in the market for interexchange and ancillary services. The Commission should work to protect and enhance this competition. CERB has participated in a number of Commission proceedings in an effort to encourage the Commission to implement a non-discrimination principle that would prevent the LECs from leveraging their monopoly position in the local exchange market into the

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2 *See* First Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Truth in Billing and Billing Format,* CC Docket No. 98-170, ¶ 6 (rel. May 11, 1999)("Truth in Billing Order").

3 *See,* Attachment 1, BellSouth Online Ordering, at https://bsol.bellsouthonline.com/ cgi-bin/gx.cgi/AppLogic%2bConsOrdLoginAppLogic (visited Nov. 26, 1999).

4 *See,* Attachment 2, GTE One Bill Service, at http://www.gte.com/products /pros/onebill.html (visited Nov. 26, 1999).

market for interexchange and ancillary telecommunications services, through their control of the local bill.[5]

Given the Commission's overarching mandate to protect competition, CERB makes the following suggestions: (1) the Commission should protect competition for interexchange and ancillary telecommunications services by overseeing industry solutions to issues related to LEC billing for competitive services; (2) the Commission possesses the authority to protect competition *vis-a-vis* the LEC bill; (3) the Commission should prevent anti-competitive and unreasonable practices on the part of LECs that seek to disadvantage competitors' services in order to dominate the market with their own services; and (4) the Commission should be aware of the lack of viable alternatives to LEC billing and collections, especially for small or intermittent charges.

II. The Commission Should Protect Competition for Interexchange and Ancillary Telecommunications Services by Overseeing Industry Solutions to Issues Related to LEC Billing for Competitive Services

CERB has documented specific instances where LECs have imposed discriminatory conditions on competitive services with regard to billing and collections. For example, one LEC has imposed a policy by which it will not bill for any competitive telecommunications service over twenty-five dollars ($25). The same LEC, however, bills for its own services, such as Internet access and paging, far in excess of that cap. Some LECs have imposed policies whereby consumers can block competitors' ancillary services from being charged to their bills, but the LECs do not apply these policies to their own similar services. LECs also have imposed billing moratoria whereby no new services or promotions can be launched by competitors who use the LEC bill, but during the moratoria the same LECs have vigorously marketed their own competing services and products. Such policies make it difficult for third party providers to compete with the LECs' own service offerings. In many cases, these policies appear designed to make LEC billing so unattractive that service providers will voluntarily cease to pursue LEC billing, thus relieving the LEC of any regulatory or contractual obligation to provide fair and reasonable terms to competitive providers. Many times these policies are fashioned as anti-

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[5] *See, e.g.* Coalition to Ensure Responsible Billing ("CERB") Submission of Information in Response to Requests by Common Carrier Bureau Policy Staff, *In the Matter of Application by New York Telephone Company (d/b/a Bell Atlantic-New York, Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc.,) for Authorization to Provide In-Region, InterLATA Services in New York,* CC Docket No. 99-295 (Nov. 8, 1999)("Bell Atlantic Application"); Comments of CERB, *Bell Atlantic Application* (Oct. 19, 1999); Comments of CERB, *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207 (Sep. 17, 1999); Comments of CERB, *In the Matter of Merger of Qwest Communications International Inc., and U S WEST, Inc.*, CC Docket No. 99-272 (Oct. 1, 1999); *ExParte* Comments of CERB in the *Matter of MCI Telecommunications Corporation Billing and Collections Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services*, RM 9108 (Jan. 21, 1999); Comments of CERB, *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170 (Nov. 13, 1998).

cramming measures, but experience reveals that this explanation is a red herring. First, as the Commission has recognized, cramming has been reduced by 65 percent over the past year.[6] While CERB continues to view cramming as a serious consumer issue, and indeed recently bolstered its own Consumer Protection Standards of Practice, cramming should not be used as a foil to obscure discriminatory conduct on the part of LECs. Second, LECs do not apply their "anti-cramming" measures to their own ancillary services. Experience has shown that LECs are capable of pressuring consumers to purchase services they do not want, or of adding services that consumers have not willingly ordered.[7] Indeed, the Commission has recognized that a "local telephone company may also engage in cramming if it bills a customer for a service provided by the local telephone company that was not authorized by the customer."[8] In light of these facts, if consumer protection were truly at the heart of LECs' concerns, they would apply all anti-cramming measures to their own operations.

Despite the above facts, CERB is hopeful that resolutions can be reached which will provide non-discriminatory treatment to competitive providers. Even in the absence of formal Commission intervention, CERB would be eager to explore creation of an industry forum for resolving billing and collections issues with the guidance of the Commission. For example, CERB proposes an industry forum to reach consensus on non-discriminatory LEC billing and collections practices, similar to the forum convened by the Commission to promulgate LEC "best practices" to reduce cramming. During and prior to the November 30 Commission meeting, it

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6 *See* Remarks of William E. Kennard, Chairman, Federal Communications Commission Before the FCC-FTC Truth-in-Advertising Public Forum, Washington, D.C., Nov. 4, 1999, at 3.

7 For example, both Pacific Bell and GTE have come under fire for sales tactics which allegedly resulted in consumers being charged for services they did not intend to purchase. In September of 1999 three California district attorneys filed a lawsuit alleging that Pacific Bell uses misleading marketing tactics to sell add-on telephone service features, such as caller ID. (*See* San Francisco Chronicle, *3 District Attorneys Widen Allegations Against Pac Bell,* Sept. 30, 1999.) Further, Pacific Bell was recently the subject of an inquiry by the California Public Utilities Commission (CPUC) as a result of a barrage of complaints that Pacific Bell misled consumers and pressured them into buying add-on phone services that they did not want; and in 1986, Pacific Bell was ordered to refund $63 million to consumers who were misled by its sales programs. (*See* Los Angeles Times, *4 Probes Reportedly Focus on PacBell Sales Tactics; Utilities: The phone company denies that it pressures employees to push services customers don't want,* Jan. 16, 1999.) Further, in 1993, Pacific Bell was fined $16.5 million by the CPUC for marketing abuses involving charges for unauthorized services. GTE has been the subject of similar complaints and in 1998 reached a $13.2 million settlement in an action arising from its alleged failure to accurately inform the CPUC about marketing abuses, which had originally led to a $3.2 million fine. (*See* Opinion Approving Modified All-Party Settlement Agreement, Investigation 98-02-025, Decision 98-12-084, California Public Utilities Commission, Dec.17, 1998.) That fine was imposed for abuses such as charging non-English speaking consumers for optional services, such as call waiting or call forwarding, which the consumers did not order.

8 *See* Federal Communications Commission Consumer Information, *Cramming Unauthorized, Misleading Or Deceptive Charges Placed on Consumers' Telephone Bills,* at http://fcc.gov/Bureaus/Common_Carrier/Factsheets/cramming.txt (visited Nov. 22, 1999).

became evident that LECs vary in their approach to providing billing and collections services to third parties, which may allow an environment hospitable to such a resolution. On an optimistic note, SBC has recognized, both at the November 30 meeting and in regulatory proceedings, that it is bound not to discriminate against its competitors.[9] SBC has said, "The FCC requires the RBOCs to bill for interexchange carriers, interLATA information service providers, and enhanced service providers where we are billing the same charges for ourselves or one of our affiliates.[10] CERB believes SBC's views can form the basis for positive discussions on an industry-wide basis. Other LECs have said that they continue to see a valuable business opportunity in providing billing and collections for third parties, but they have failed to recognize an obligation to treat third parties fairly. Finally, some LECs, such as U S WEST have said that they have no obligation to provide billing and collections services to providers of unregulated services, including paging, voice mail and Internet access, and indeed U S WEST has discontinued such billing and collections. Given that LECs interpret their obligations toward their stewardship of the local bill in widely varying manners, the Commission would likely have to support an industry solution in order for it to achieve success. Indeed, U S WEST's failure to attend the November 30 meeting is strong evidence that certain members of the industry will not cooperate in reaching a solution.

In order to promote and expand upon principles of non-discriminatory behavior which would foster a competitive environment for interexchange and ancillary telecommunications services, CERB suggests that the Commission oversee industry efforts to reach consensus on appropriate non-discriminatory billing and collections practices. Note, however, that while CERB supports such an effort, CERB continues to argue that the Commission can itself implement a non-discrimination principle which would require LECs to treat competitors' services in the same manner as they treat their own services with regard to billing and collections on the LEC bill.

III. The Commission Possesses Authority to Protect Competition

While the Commission expressed during the November 30 meeting that it had little power to intercede in the billing and collections area, the Commission has already exercised jurisdiction over both billing and collections issues and issues related to LEC leveraging of monopoly power over non-local exchange services. The Commission has adequate authority to foster competition for interexchange and ancillary services for which consumers are billed on the local telephone bill. Specifically, the Commission has interceded with regard to interexchange services, competitive ancillary telecommunications services that are billed through the local bill, calling party pays services and enhanced services. Furthermore, the Commission has general

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9 Comments of SBC Communications, *Pay-Per-Call Rule Review,* FTC File N. R611016, at 8 (June 4, 1999).

10 *Id.*

jurisdiction under Title I of the Communications Act of 1934 where it must act to promote a statutory purpose.

A. Interexchange Services. The United States Congress and the Commission have recognized the importance of preventing LEC monopolization of the interexchange market via leveraging LEC dominance in the local market. During consideration of the Telecommunications Act of 1996, Congress acknowledged the likelihood that the RBOCs, when permitted to enter the long distance market, would inappropriately favor their own interexchange carrier ("IXC") affiliates. Thus, Congress enacted Section 272 of the Act, which prevents the RBOCs from discriminating between their own IXC affiliates and unaffiliated IXCs in the provision of "goods, services, facilities, and information."[11] In interpreting the Act, the Commission found that Section 272 was intended to protect competition in new markets "from the BOCs' ability to use their existing market power in local exchange services to obtain an anti-competitive advantage in those new markets the BOCs seek to enter."[12] The Commission recognized that the provision of billing and collections was a "service" that RBOC affiliates may use to their advantage, and thus specified that billing and collections was subject to a non-discrimination requirement.[13] Thus, despite its 1986 Order detariffing billing and collections (*Detariffing Order*),[14] the Commission is empowered to extend its authority to protect competition even where the service in question is billing and collections.

In today's environment, where one RBOC is currently under consideration for entry into the interexchange market,[15] it is more important than ever for the Commission to reiterate its commitment to ensuring that competitive interexchange carriers do not face discrimination *vis-a-vis* an RBOC's own service offering. A recent statement by U S WEST underscores the degree to which the industry must hear a reaffirmation of this principle. U S WEST recently filed *ex parte* comments with the Commission where it called the Section 272 non-discrimination requirement with regard to billing and collections an "alleged" requirement.[16] As CERB has told

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[11] 47 U.S.C. Section 272(c)(1).

[12] Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, ¶ 6 (1996)("Non-Accounting Safeguards Order").

[13] *Id.* at ¶ 217.

[14] *In the Matter of Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150, ¶ 37 (1986) ("Detariffing Order").

[15] *See* Bell Atlantic Application.

[16] *Ex Parte* Filing of U S WEST, Inc. *In the Matter of Merger of Qwest Communications International Inc., and U S WEST, Inc.*, CC Docket No. 99-272, at 3 (Nov. 30, 1999).

the Commission, the LEC bill is a critical billing mechanism for interexchange service, particularly 10-10-XXX and zero-plus services that may result in a charge to a consumer that is less than the cost of a postage stamp. Furthermore, in 10-10-XXX and zero-plus situations, only the LEC knows the identity and location of the end user, so the LEC's participation in the billing process is critical. These charges simply cannot effectively be billed through a direct bill. If the Commission were to permit an environment where only the RBOCs could effectively place interexchange calls on local bills in their regions, RBOCs would quickly create regional local /interexchange monopolies.

B. Interexchange and Ancillary Services Billed Through the Local Bill. The Commission has acted in at least two ways with regard to interexchange and ancillary services billed on the LEC bill. On May 20, 1998, the Commission convened an industry forum to address cramming on the LEC bill. While the Commission has not recognized that this forum, and the industry guidelines that flowed from it, are official Commission actions, the results carry the imprimatur of the Commission. Indeed, the Anti-Cramming Best Practices Guidelines are often referred to in the industry as Commission guidelines. Further, the Commission exercised authority over billing and collections through its Truth in Billing rulemaking.[17] In that proceeding, the Commission determined that a LEC telephone bill is an integral part of the relationship between a LEC and the customer and that, therefore, regulation of information on the bill falls within the Commission's authority under Section 201(b).[18] Inherent in the Commission's reasoning is a recognition that LECs will impose the Truth in Billing requirements on the competitive providers for whom they bill. Thus, the Commission in essence is regulating the billing and collections arrangements between LECs and third party telecommunications providers. While some of the results of the Commission's anti-cramming initiatives have been favorable and have protected consumers, the Commission's actions also have created an environment where LECs can obviate their obligations to competitive providers who use the local bill. If a LEC determines it no longer wishes to bill for a competitor, it may simply invoke discriminatory "anti-cramming" measures. What is worse, faced with implementing the new Truth in Billing rules, many small LECs have chosen to cease billing for competitive providers. Where the Commission has acted to regulate some aspects of LEC billing and collections to this end, it also possesses the authority to prevent discrimination against competitive providers.

C. Calling Party Pays. The Commission recognized in its Notice of Proposed Rulemaking in the Calling Party Pays ("CPP") proceeding[19] the role LEC billing and collections may play in fostering CPP development, and it requested comment on the extent of its

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[17] *See* Truth in Billing Order.

[18] *Id.* at ¶ 13.

[19] Notice of Proposed Rulemaking, *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, FCC 99-137 (rel. July 7, 1999) ("CPP Notice")

jurisdiction to require LEC billing and collections for CPP.[20] Specifically, the Commission requested comment on "whether the statutory objectives of the Act support the assertion of ancillary jurisdiction here."[21] The Commission has recognized that it may exercise Title I ancillary jurisdiction over billing and collections if necessary to promote a statutory purpose. In the CPP rulemaking a variety of commenters, including CERB, argued that the Commission indeed possesses jurisdiction to require LEC billing and collections of CPP calls.[22]

D. Enhanced Services. The Commission has a long history of acting where necessary to prevent RBOCs from leveraging their monopoly in the local market into new markets. As far back as 1980, the Commission required in its Computer II decision[23] and its related regulations[24] that RBOCs that provide certain enhanced services must do so in a manner that would discourage them from promoting those services by misusing their power in the local exchange market (i.e., through separate subsidiaries with all transactions reduced to writing). The regulations allowed the Commission to proscribe RBOC non-local activities in a number of ways, but also provided that RBOC behavior may be proscribed "as otherwise authorized by the Commission."[25] Despite the evolution of the law in this area, the Commission's grant of authority to prevent RBOCs from favoring their affiliates remains, and the Commission may use such authority to prevent RBOC monopolization of non-local telecommunications services. The Commission should use this authority to promulgate a rule prohibiting RBOCs from discriminating against competitors with regard to billing and collections.

E. Voice Mail and Internet Access. The Commission and the Congress have recognized the importance of competition in the voice mail market. As such, Congress enacted Section 260 of the Telecommunications Act of 1996[26] and the Commission implemented regulations preventing LECs from discriminating in favor of their own voice mail

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[20] *Id.* at ¶ 64.

[21] *Id.* at ¶ 65.

[22] *See, e.g.* Comments of AirTouch Communications, *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, at 25-31 (Sept. 17, 1999); Comments of Pilgrim Telephone at 14-21; Comments of the Personal Communications Industry Association ("PCIA") at 44-51; Comments of America One Communications at 9-10; Comments of Nevadacom at 4-6; Comments of Voicestream Communications at 7-9. *See also* Comments of the Coalition to Ensure Responsible Billing at 11-16.

[23] Final Decision, *In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384 (April 7, 1980).

[24] 47 CFR 64.702.

[25] 47 CFR 64.702(b).

[26] 47 U.S.C. § 260.

("telemessaging") services.[27] The Commission found that the statute further requires RBOCs who provide interLATA telemessaging services to do so on a non-discriminatory basis pursuant to Section 272 of the Telecommunications Act.[28] Thus, pursuant to the Non-Accounting Safeguards Order, once an RBOC enters the interLATA market with a bundled voice mail offering, it must provide non-discriminatory billing and collections to competitive voice mail providers. Furthermore, the Commission found, in the Non-Accounting Safeguards Order, that the Section 272 prohibition on discrimination also applies to the provision by an RBOC of Internet access. The Commission stated, "If a BOC's provision of an Internet or Internet access service[29] (or for that matter any information service) incorporates a bundled, in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, that service may only be provided through a section 272 affiliate, after the BOC has received in-region interLATA authority under section 271."[30] Given RBOC treatment of competitors' voice mail and Internet access services, the importance of these policies becomes increasingly clear.

F. General Jurisdiction. The Commission is empowered to use its Title I ancillary jurisdiction to prevent discrimination, protect consumer choice, and promote competition, despite its finding in the *Detariffing Order* that it will not exercise Title II direct jurisdiction over third party billing.[31] In the *Detariffing Order*, the Commission recognized that it possesses the power to "regulate exchange carrier provision of billing and collection service" under Title I, where it chooses to exercise that power.[32] First, the Commission reasoned that this power stems from its "jurisdiction over 'all persons engaged within the United States in such [interstate or foreign] communication.'"[33] Second, the Telecommunications Act of 1934, as amended, defines "communication by wire," which is subject to the Commission's jurisdiction, to include "services . . . incidental to such transmission."[34] Finally, the Commission is empowered by Section 4(i) of the Telecommunications Act of 1934 to "perform any and all acts, make such rules and

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27 *See* Final Rule; Clarification and Interpretation, *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring*, CC Docket No. 96-152; FCC 97-35 (Feb. 20, 1997).

28 *Id.* at ¶ 210.

29 Footnote omitted (describing nature of Internet).

30 Non-Accounting Safeguards Order at ¶ 127.

31 Detariffing Order at ¶ 35.

32 *Id.* at ¶ 36.

33 *Id.* (quoting 47 U.S.C. § 152(a)).

34 *Id.* (quoting 47 U.S.C. § 153(52)).

regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." [35]

1. Statutory Purposes

As an initial matter, the exercise of ancillary jurisdiction requires that such regulation would "be directed at protecting or promoting a statutory purpose."[36] Two critical statutory objectives would be promoted by invoking Title I to ensure non-discrimination with regard to billing and collections on the local telephone bill: (1) the Commission's general mission to perpetuate widespread communications; and (2) its mandate to promote competition in telecommunications services.

a. Proliferation of Communication.

The Commission has a duty to promote widespread communication to all Americans.[37] Billing and collections of third party services through the local telephone bill furthers this objective by making it more economical for competitive telecommunications providers to bill their services, thus creating widespread communications opportunities for American consumers. To the extent that the Commission bars discrimination related to third party charges on the local bill, that action will ensure the proliferation of existing and new telecommunication services.

b. Promotion of Competition

The Commission may also invoke its ancillary jurisdiction in order to promote the objectives of the Telecommunications Act of 1996, which include providing "a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[38] In the Truth in Billing proceeding, for example, the Commission has recognized the importance of consumers "reap[ing] the benefits of a competitive market."[39] Preventing LECs from discriminating against

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[35] *Id.* (quoting 47 U.S.C. § 154(i)).

[36] *Id.* at ¶ 37.

[37] *See* 47 U.S.C. § 151 (the purpose of the Telecommunications Act of 1934 is to make available " to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges").

[38] H.R. Conf. Rep. No. 104-458, at 1 (1996) (Conference Report on the Telecommunications Act of 1996).

[39] Truth in Billing Order at ¶ 3.

competitive services on the local bill is critical to fostering competition in the telecommunications marketplace, especially for small competitive service providers. Use of the local telephone bill – on a non-discriminatory basis – reduces transaction costs for smaller service providers and thus enables them to enter the market and compete vigorously with their larger rivals. Moreover, it satisfies the well-recognized consumer demand for a single, consolidated bill.

In the course of several proceedings, the Commission has found jurisdiction to address billing and collections for many services that may be billed on the LEC bill. These services include interexchange service, ancillary services, calling party pays, enhanced services and the combination of these services that may be billed on the LEC bill. Likewise, the Commission is empowered to: (1) promulgate a rule which would require LECs that provide billing and collections services to their own non-LEC operations to do so on a non-discriminatory basis; (2) convene a Commission-led industry process for resolving billing and collections issues; or (3) take both of these actions.

IV. The Commission Should Prevent Anti-Competitive and Unreasonable Practices on the Part of LECs that Seek to Disadvantage Competitors' Services in Order to Dominate the Market with Their Own Services.

As discussed during the November 30 meeting, U S WEST discontinued billing and collections for third parties' ancillary telecommunications services as of December 1, 1999. With regard to this action, CERB makes two points: (1) in the absence of Commission intervention, this action will harm consumers and competition, and it will set a precedent for other LECs that the Commission will allow such an action; and (2) the Commission should be aware of U S WEST's motives for this action, and should not unquestioningly accept U S WEST's hollow assertions that the move was intended to reduce cramming or that U S WEST has created a viable billing alternative.

U S WEST's denial of billing and collections services has had an immediate impact on competition and on consumer welfare. One billing clearinghouse alone reports that at least two dozen of its competitive telecommunications service providers were denied U S WEST billing and collections services. It follows that consumers who are already subscribers to these providers will also lose -- at least in the near term -- the service they requested, since the service provider cannot provide a service to consumers who cannot be billed. As a result of U S WEST's denial of billing and collections, more than 50,000 consumers of one billing clearinghouse lost the ability to receive charges on the local bill for services they had already purchased. Most of the service providers who had sold these services are small and lack the resources to move the bulk of their customers to another billing mechanism rapidly. Instead, service provider staff members have been calling consumers one at a time and asking for the information necessary to provide a direct bill. In many cases, the consumers have said they would rather purchase a service for which they can pay a consolidated bill. In these cases, the service provider has lost the customer. Naturally, if the consumer continues to demand a consolidated bill, he will eventually be forced to buy the competing U S WEST product. As of December 14, 1999, one clearinghouse reports that fewer than 500 of its 50,000 consumers whose providers have been cut off the bill have been reached and agreed to use an alternate billing mechanism. The billing clearinghouse estimates that it will take so long to reach all of the affected consumers that fair credit practices will dictate that bills will not be collected. In addition, many consumers will not feel bound to pay a bill that is over 60 days old when it first reaches them.

At the same time that consumers who subscribed to competitive services were being told they could no longer receive those charges on the local bill, U S WEST was aggressively marketing its own ancillary products. For example, on November 22, 1999, U S WEST heralded its launch of "'Integrated Messaging', 'WebVision' as Part of 'Online One-Stop Shop' of 'Net Access, Appliances & Applications to Simplify Web Use for Consumers."[40] Billing for competitive Internet services was discontinued just one week later.

Given U S WEST's marketing of its own services, in conjunction with the cessation of billing and collections for many competitive services, the Commission should be skeptical of claims that the action was aimed at reducing cramming. Furthermore, U S WEST's claims in the wake of its cessation of billing that it is receiving 3,000 cramming complaints a month[41] should be viewed in context with its June 30 letter to the Commission where it stated that it had reduced cramming so significantly that it only received "less than one [escalated complaint] a month."[42] U S WEST also told the Commission that cramming had been so seriously curtailed that "if U S WEST's experience is replicated by others, cramming is on the down curve and becoming a thing of the past."[43] Clearly U S WEST has tailored the information it provides to suit its instant needs.

Finally, U S WEST has told the Commission that it has created a stand-alone billing product that will serve as an alternative to the local bill for competitive providers. The so-called "Your Bill" suffers from several defects that make it a wholly inadequate substitute for the local

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40 *See* U S WEST Press Release, "'Welcome to Wired, Wired West' - U S WEST Launches New Internet Services That Add Ease-of-Use & Excitement, Take Away Headaches of Online Life," at http://www.uswest.com/news/112299.html (Nov. 22, 1999) (visited Dec. 9, 1999).

41 *See* U S WEST Press Release, "U S WEST Moves to Eliminate 'Cramming' - Unauthorized Charges by Other Companies - From Customer Phone Bills," at http://www.uswest.com/news/120199c.html (Dec.1, 1999) (visited Dec. 15, 1999) ("U S WEST handles about 3,000 cramming-related complaints a month....").

42 Letter from U S WEST, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, Re: Industry Best Practices to Eliminate Cramming: Follow-up Requests, at 2 (July 30, 1999).

43 *Id.*, Attachment at 2.

bill. At the outset, it is such a poor offering that no CERB billing clearinghouse has used the service, and CERB is aware of only one other entity that has expressed interest in the "Your Bill." It does not provide a collections component similar to the one provided through the local bill. There is no balance forward capability and no accounting for credits and adjustments. The "Your Bill" provides no pre-collect or collect treatment for non-pay accounts and no inquiry service for end-user disputes. Furthermore, it does not provide consolidation; if consumers order products from several providers they will receive several small bills which will cause confusion and annoyance and flies squarely in the face of consumers' desire for a single bill. Perhaps the most telling sign that the local bill is so far preferable is that U S WEST continues to use the local bill for its own products and even allows some clearinghouses to have access to the local bill when, for technical reasons, a billing clearinghouse is necessary to facilitate a charge for a U S WEST affiliate. While U S WEST claims that its cessation of billing was an effort to eliminate cramming, it will bill anything that is submitted to the "Your Bill" with no consumer protections attached. Clearly the generic bill is not a viable billing alternative, but rather a defense against charges that U S WEST has ceased billing in an effort to disadvantage its competitors.

V. The Commission Should Be Aware of the Lack of Viable Alternatives to LEC Billing and Collections, Especially for Small or Intermittent Charges

The Commission has suggested that competitive service providers and the billing clearinghouses who bill for those providers should seek alternatives to the LEC bill. As a practical matter, it is CERB's experience over the 13 years since the Commission made that determination that these alternatives are not feasible for billing and collections of many telecommunications services, particularly for small or intermittent charges. Aside from the local bill, there is no nationally ubiquitous, reliable, economically feasible billing platform for many types of interexchange and ancillary services. Further, Americans prefer a consolidated telephone bill. Indeed, a study by the Yankee Group indicated that 80 percent of consumers prefer a single bill for their telecommunications services.[44] Driving competitors off the LEC bill, while charges for LEC services remain, creates an enormous consumer incentive to defect from a competitive service and use the LEC service to benefit from the convenience of paying a single bill.

Some LECs have argued that they have some special claim to the end-user customer, but at the same time these LECs refute the argument that the bill is a public trust, paid for by ratepayers. During the November 30 meeting, one LEC representative argued that its facilities have been revamped and are not the same legacy systems once paid for by ratepayer dollars. While CERB questions the validity of this claim, even if true it misses the point: during the reign

[44] Presentation of panelist E. E. Estey, Vice President, Government Affairs, AT&T Corporation, before the Federal Communications Commission Public Forum on Local Exchange Carrier Billing for Other Businesses (June 24, 1997).

of the monopolies, LECs received the benefit of an exclusive relationship with consumers. That relationship, when leveraged into the market for non-local services, yields a competitive advantage against other providers. This advantage would be difficult, if not impossible, to overcome.

CERB does not believe that closing off access to the local bill will spontaneously result in the creation of a billing alternative. First of all, the problem the billing clearinghouses confront is an immediate one, and any non-LEC solution would require a significant start up period. Furthermore, so long as the demand for ancillary telecommunications services is being met by the LEC, the market impact will be the loss of competitors, not the formation of a new billing alternative. In addition, since the LEC would continue to render its own bill for local and other services, any alternative would fail to address the consumer demand for a single consolidated bill.

Contrary to suggestions the Commission has made, independent telecommunications service providers and billing clearinghouses have every incentive to end their dependency on the LEC bill by searching for alternatives. Competitive providers do not find it advantageous to be at the mercy of their more powerful LEC rivals with regard to conditions for billing and collections. Indeed, some CERB members, MCI, AT&T and others have attempted to create substitutes for the local bill and after long trials have failed. The start up time and cost of replicating a ubiquitous nationwide billing and collections system, the difficulty of gaining access to current customer billing information, and the economic realities of replicating the efficiencies of the LEC bill for small or intermittent charges have all proven prohibitive. Competitive providers continue to search for viable business alternatives to the LEC bill, but the billing mechanisms presented thus far fail to meet the needs of telecommunications providers.

The Commission has suggested that billing on the cable television bill could be an alternative to LEC billing. Many Americans do not subscribe to cable service, however, and those who do are subscribed to a myriad of regional and local services. Conversely, nearly all Americans have access to local telephone service, and only a handful of LECs serve all American households. The cable bill is not designed to accommodate telephony type charges and lacks the accounting mechanisms necessary for settlement of third party charges. Further, consumers would be confused and frustrated by telephony charges on their cable bill. Use of the electric bill, which has also been suggested, would suffer from many of the same defects. Finally, there is no linkage between a consumer's billing telephone number and his cable or electric account number, so the industry would find it difficult to identify the end-user responsible for a telephone charge. Thus, contracting for nationwide billing and collections services is feasible on the LEC bill, but not on the cable or electric bill.

Nor is direct billing a viable substitute for the LEC bill, particularly for services such as calling party pays or 10-10-XXX long distance. As an initial matter, when LEC consumers use these services, only the LEC has an accurate, real-time record of where to locate the consumer for billing purposes. Further, direct billing of these charges will often cost more than the cost of preparation and postage for a direct bill.[45] If service providers were forced to bill customers directly for charges, they simply could not remain competitive. The cost of creating and maintaining separate billing systems to every household is prohibitive and unnecessary. The LECs, as regulated monopolies in the market for local phone service, have already established pervasive nationwide coverage for billing charges, and competitors simply need access to local bills in order to be competitive. The local bill allows billing and collections at the marginal cost of including additional charges on a bill that would already be generated to collect charges for telephone service. Competitive providers cannot duplicate the efficiencies of the local bill. LECs offset the cost of billing and collections – everything from postage costs to billing software – through revenue gained from local service and from third party billing contracts to bill and collect for telecommunications services. Competitive providers attempting to bill a single call would find themselves bearing all of those costs to produce a bill, often for a small charge.

Although the use of credit card bills may once have seemed to offer a promising avenue for billing of telecommunications services, such a billing mechanism cannot possibly reach all customers. Not all consumers wishing to utilize telecommunications services possess credit cards. In fact, the most recent Census Bureau statistics show that as of 1995, approximately one-third of American families *did not* have general purpose credit cards. Significantly, lower income consumers were less likely than other Americans to possess a credit card: only 26 percent of families earning under $10,000 had credit cards, and only 53 percent of families earning between $10,000 and $24,999 used general purpose credit cards.[46] Moreover, credit card billing currently does not provide for the necessary itemization of calls. Thus, credit cards lack the ubiquity, reliability, and level of detail of the LEC-provided telephone bill, and lower-income consumers would be particularly difficult to reach without using the LEC bill.

By consolidating small charges from a number of different service providers and arranging for them to be included on consumers' monthly phone bills, billing clearinghouses (in concert with LECs) allow start-up companies with innovative products and services to take advantage of the billing economy of scale while developing their customer base for the new market. LEC billing reduces the barriers to entry for existing markets and also fosters the creation of new markets by eliminating the need to develop independent billing and collection services.

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45 *See e.g.*, Comments of AirTouch, *In the Matter of Calling Party Pays Service Option in Commercial Mobile Radio Services* at 17 ("In some cases, the billed amount is less than the cost of postage to mail the bill; in this instance separate bills from different carriers are much less effective than a single bill.").

46 U.S. Census Bureau, *Statistical Abstract of the United States*, at 524 (Oct. 13, 1998).

Allowing LECs to use the local bill to favor their own services will only provide the LECs with a springboard to dominate the market for interexchange and ancillary services, while their competitors bear the burdens of seeking less efficient, less reliable modes of billing. CERB does not suggest that the Commission should regulate billing and collections, only that it should act to protect consumers and enhance competition by preventing discrimination against competitive providers.

If you have any questions concerning this filing, please contact me at (202) 424-7707.

Sincerely,

Gary D. Slaiman

Gary D. Slaiman
Kristine DeBry

cc: Larry Strickling
Robert Atkinson
Darius Withers

ATTACHMENT 1

BELLSOUTH

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ONLINE ORDERING

FAQ ASK US NEW TO BELLSOUTH?

Simplify your life
order your BellSouth® Solutions online.
It's as easy as 1 - 2 - 3

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When you order a BellSouth® Complete Choice® plan, you get your local telephone service plus all of the calling features you need at one low price.

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Enjoy the flexibility and freedom of wireless service. Select from several plans that let you talk as much as you need without breaking the bank.

Paging Service
With BellSouth® Paging, you're connected. Select from two local paging services — numeric or alphanumeric.

Internet Service
Connect to a world of information with BellSouth's top-rated Internet service and get unlimited usage for one monthly price.

3 Get it now!

Enter your information below to begin building your own BellSouth® Solution.†

Telephone Number: [ ] - [ ] - [ ]

and

RightTouch® Personal Access Code (PAC): [ ]

or

Social Security Number (only last 4 digits): [ ]

CONTINUE

This online ordering system requires Netscape Navigator 4.0 or higher or Internet Explorer 4.0 or higher.

†BellSouth® Solutions available only to residential customers subscribing to the BellSouth® Complete Choice® plan. Certain restrictions and/or connection fees apply.

BellSouth Responds To Customer Demand With New One-Stop Shop Strategy: Introduces BellSouth® Solutions

First Regional Bell To Offer An Integrated Package Of Services On One Bill With One Number To Call For Service

For Immediate Release:

August 3, 1999

ATLANTA - BellSouth (NYSE: BLS) today became the first telecommunications company in the nation to offer residential and small business customers a suite of communications solutions including Internet access, wireless, paging and local phone service with calling features all on one bill. The new packages of services, called BellSouthÒ Solutions and BellSouthÒ Business Solutions, marks the first time the company has reached across its lines of business and incorporated its major products and services into a customized package with one number to call for service.

"Now more than ever, people want to simplify their lives," said Sue McLaughlin, president, BellSouth Consumer Services. "Our customers are telling us they want the convenience of receiving all their communications services from one company, on one bill with a single point of contact. We have always listened to our customers, and we believe BellSouth Solutions provides them with the customized solutions they demand."

For residential customers, the BellSouth Solutions package features the BellSouth® Complete Choice® plan, to which customers can add their choice of Internet access, wireless and paging services at reduced rates. The Complete Choice plan, which recently surpassed four million subscribers, is the only required element in the package. It includes local phone service plus the customers' choice of all the phone features they need such as Caller ID, Call Waiting Deluxe and Three-way Calling.

The rest is up to the customer. The flexible nature of the package structure allows customers to choose the combination of BellSouth services that suits their needs. The options include the following choices:

- Internet Access Service
    - Analog dial up
    - ADSL (where available)
- Wireless Phone Service
    - Additional "minute packs" available

- Paging Service
  - Local numeric
  - Local alphanumeric

Small Business customers can also take advantage of an integrated package.

"BellSouth Business Solutions is just one of the many strategies we are using to address the growing needs of our customers," said Dave Abrahamson, vice president of marketing for BellSouth Small Business Services. "It also allows us to integrate our leading products and services into a multi-line package to further position the company as a leader in the small business services arena."

The small business packages are developed to the "greatest common denominator" yet offer flexibility. Small business customers can build on the basic BellSouthÒ Complete ChoiceÒ for Business plan by adding Internet access, wireless and paging services at a reduced rate. In addition, small business customers can take advantage of an offer for a special discount on existing Yellow Pages advertising.

Recognized as a leader in delivering industry-leading standards of customer care, BellSouth has created a customer service center dedicated to handling the post-sales service needs of BellSouth Solutions residential customers. Staffed by specially trained service representatives, the center, located in Jacksonville, Fla., is capable of handling the service needs of any BellSouth Solutions product.

Residential customers can sign up for their customized package of BellSouth Solutions by calling 1-800-432-2057 or by accessing the BellSouth Web site at www.bellsouth.com.

The introduction of BellSouth Solutions is part of an overall corporate strategy of strengthening BellSouth's leadership position as the premiere communications company in its region.

Statistics released by Forrester Research1 further support BellSouth's positioning, indicating that 83 percent of U.S. households already purchase an additional communications service beyond local and long distance telephone services. In addition, the Yankee Group2 cites that 69 percent of households using multiple communications technologies would use one company for all communication and entertainment needs if given the choice.

"This integrated offer is just the beginning," said Alice McCall, vice president of Marketing & Strategy for BellSouth Consumer Services. "BellSouth is uniquely positioned to package wireline, wireless and data services for its customers, and they can look forward to having more to choose from in the future, such as video and long distance."

Earlier in the year, the company offered an integrated package, combining two of its most successful services: BellSouth.netâ Internet service and the BellSouth Complete Choice plan. Within 90 days, 116,000 residential customers signed up for the offer, confirming consumers' interest in purchasing packaged telecommunications services.

In addition, a recent study by McKinsey and BellSouth3 reported that 31 percent of small business customers are interested in bundled telecommunications services, and of those customers, 55 percent are "extremely/very interested" in bundled services. The BellSouth Business Solutions package fulfills this request and meets the needs of this growing and important market. Small business customers may call 1-800-973-7349 for more information on BellSouth Business Solutions.

BellSouth is a $24 billion communications services company. It provides telecommunications, wireless communications, cable and digital TV, directory advertising and publishing, and Internet and data services to nearly 35 million customers in 19 countries worldwide.

1"Making Consumer Bundles Work" -- Forrester Research
2"Technologically Advanced Families Survey" -- Yankee Group
3"Consumer MPO Market Study" -- McKinsey & BellSouth Marketing

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For more information, contact:

Necole Merritt
BellSouth
(404) 249-3909
merritt.necole@bsc.bellsouth.net

Debbie Locker
BellSouth
(404) 927-7445
dlocker@bellsouth.net

NOTE: For more information about BellSouth, visit the BellSouth Web page at http://www.bellsouth.com. Also, BellSouth news releases dating back one year are available by fax at no charge by calling 1-800-758-5804, ext. 095650 or write: for Atlanta releases 1155 Peachtree St., N.E.; Atlanta, Ga. 30309-3610 and for DC releases; 1133 21st St., N.W.; Suite 900; Washington, D.C. 2003.

A list of BellSouth Media Relations Contacts is available in the Corporate Information Center.

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BELLSOUTH CORPORATE INFORMATION

BELLSOUTH

News Release

BellSouth Offering One Price, One Bill, One Call for Residential, Multi-Line, Cellular Customers

For Immediate Release:

July 28, 1998

ATLANTA (July 28, 1998) - Today more than 82 percent of Americans are looking for ways to simplify their lives[1]. Approximately 71 percent of Americans believe their lives are too complicated[1], and 65 percent are searching for ways to get their lives more in control[1].

At a time when consumers are facing a myriad of telecommunications choices, BellSouth® has responded to these consumer trends and demands by making life a little simpler. Beginning in July, BellSouth customers throughout the Southeastern U.S. will be able to pay a single flat-rate price for an entire set of advanced calling features on multiple home phone lines and cellular service. And for the first time, they'll be able to merge charges for their BellSouth telephone and cellular services and Internet access onto a single bill.

In addition, those customers with multiple BellSouth products can now dial a single customer service number - 203-BELL - to handle any aspect of their service. "Time after time, our customers have told us they want to simplify their telecommunications services," said Joseph Schultz, vice president of consumer marketing, BellSouth Telecommunications. "By offering one price, one bill and one number for service, we're giving customers what they've said they need most." Nearly two years ago, BellSouth began offering consumers a package of basic telephone line service and calling features for one flat price, but the package applied only to a single line. Called the BellSouth® Complete Choice® plan, the service allows customers to choose from 20 features, including Caller ID, Call Waiting, Call Forwarding, Three-way Calling and Call Return, to customize the perfect package for their needs. Since then, the Complete Choice plan emerged as the most successful product launch in the company's history, attracting well over three million customers.

The Complete Choice package proved so successful that BellSouth is now expanding it to include multiple line and cellular wireless versions.

- The Complete Choice Multi-line plan offers the same choice of 20 calling features and extends it to all lines within a household. As an added bonus, Complete Choice Multi-line plan customers receive even more additional features that are not part of the Complete Choice package to further increase the functionality of all lines. For no additional charge, these customers will receive features like Hunting (if one line is busy, the call will roll to the next available line), Three-Way Calling with Transfer (seamlessly transfer incoming calls between lines in the home or to any number outside the home), Call Pick-up and Call Hold. "The Southeastern U.S. has seen phenomenal growth of multiple lines into the home, and we wanted to extend the value packaging of the Complete Choice plan to include those customers," Schultz said. Nearly two million households have additional lines to date and annual growth rates of additional lines are approaching 15 percent.

- Cellular subscribers have the same option of all the popular calling features through Complete Choice Cellular.

Complete Choice plan customers also can subscribe to the recently announced BellSouth® FastAccess℠ ADSL (Asymmetrical Digital Subscriber Line) Internet Service at a reduced rate of $49.95 - another sign of how BellSouth is increasingly packaging its services together. FastAccess service uses ADSL (asymmetrical digital subscriber line) technology to deliver an "always on" Internet connection and download speeds 30 to 100 times faster than typical dial-up telephone connection. FastAccess service has seen early success with thousands of on-line reservations requesting service.

"We are continuing to bring together a range of services for customers and give them the benefits of value and convenience," continued Schultz. The single billing statement being introduced initially will show monthly charges for local and cellular services and Internet access. Other services are expected to be added to the single bill by the end of the year.

Services that customers need and want are driving the growing acceptance of enhanced calling services. Caller ID recently surpassed the 5 million subscriber mark, making BellSouth the number one Regional Bell Operating Company in the country in market penetration for this service. In addition, MemoryCall® voice message service, BellSouth's competitive response to the answering machine, has more than 2 million users, placing BellSouth second in the country in market penetration.

BellSouth (NYSE: BLS) is a $21 billion communications services company. It provides telecommunications, wireless communications, cable and digital TV, directory advertising and publishing, and Internet and data services to nearly 31 million customers in 20 countries worldwide.

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[1] 1996 Yankelovich Monitor® consumer study

Click here to view BellSouth® Complete Choice® Plan Features Facts-At-A-Glance.

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For more information, contact:

Debbie Locker
(404)927-7445

Suzanne Pruitt
(404)927-7430

NOTE: For more information about BellSouth, visit the BellSouth Web page at http://www.bellsouth.com. Also, BellSouth news releases dating back one year are available by fax at no charge by calling 1-800-758-5804, ext. 095650.

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